

## **Explanatory Memorandum to the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2021.**

This Explanatory Memorandum has been prepared by Health and Social Services Department and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

### **Minister Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) (EU Exit) Regulations 2021. I am satisfied that the benefits justify the likely costs.

Vaughan Gething MS

**Minister for Health and Social Services**

3 March 2021

## **PART 1**

### **1. Description**

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) (the Principal Regulations).

The Principal Regulations allow Local Health Boards (LHBs) in Wales to recover charges from overseas visitors who are not ordinarily resident in the United Kingdom (UK) for certain categories of healthcare provided to them in Wales, unless the overseas visitor, or the service they receive, falls within an exemption.

These Regulations are being made to ensure that they reflect the Social Security Co-ordination (SSC) Protocol provisions of the UK Trade and Cooperation Agreement (TCA) as a consequence of the UK's withdrawal from the European Union (EU); and to include new/revised reciprocal healthcare agreements. Amendments to the Principal Regulations are required to ensure that the law remains operable.

### **2. Matters of special interest to the Legislation, Justice and Constitution Committee**

None.

### **3. Legislative background**

The instrument is being made under section 124 of the National Health Service (Wales) Act 2006 (the 2006 Act) which confers a power on the Welsh Ministers to make regulations for the making and recovery of charges from persons who are not "ordinarily resident" in the United Kingdom for NHS services.

The instrument is also being made under section 203(9) and (10) of the 2006 Act and is subject to the negative resolution procedure.

### **4. Purpose and intended effect of the legislation**

The regulations will make provision for those EU State visitors who have an entitlement to the provision of health services without charge by virtue of a right arising from the SSC Protocol provisions of the UK TCA and ensure that visitors from countries with new/revised reciprocal healthcare agreements with the UK remain exempt from charging for particular NHS care.

The Regulations:

- Provide an exemption to any overseas visitor who has an entitlement to the provision of health services without charge by virtue of a right arising from the SSC Protocol provisions of the UK TCA.
- Amend Schedule 2 to the Principal Regulations to add Ireland and Norway.

## **5. Consultation**

No public consultation was undertaken. The purpose of the instrument is to enable the law still operates effectively as a consequence of the UK TCA with the European Union and updates the countries with reciprocal healthcare agreements with the UK.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **6. Options**

Two options have been considered:

Option 1: - Do nothing, retain the National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) as currently in force.

Option 2: - Amend the National Health Service (Charges to Overseas Visitors) Regulations 1989.

#### **Option 1: Do nothing, retain The National Health Service (Charges to Overseas Visitors) Regulations 1989 (SI 1989/306) as currently in force**

The UK left the EU on 31 December 2020, with a UK Trade and Cooperation Agreement (TCA).

Article 67 of the Social Security Co-ordination (SSC) Protocol (provisions of the UK TCA), notes that the Parties shall ensure in accordance with their domestic legislation that the provisions of the Protocol on Social Security Coordination have the force of law, either directly or through domestic legislation. The European Union (Future Relationship) Act 2020 (EU(FR)A) gives the SSC Protocol that effect.

The provisions in the SSC Protocol ensure that individuals who move between the UK and the EU in the future will have their social security position in respect of certain benefits protected. For example, where the UK or an EU Member State is responsible for the healthcare of an individual, they will be entitled to reciprocal healthcare cover. This includes certain categories of cross-border workers and state pensioners who retire to the UK or to the EU. In addition, the Protocol ensures necessary healthcare provisions – akin to those provided by the European Health Insurance Card (EHIC) scheme – continue. This means individuals who are temporarily staying in another country, for example a EU Member State national who is in the UK for a holiday, will have their necessary healthcare needs met for the period of their stay. The Protocol also protects the ability of individuals to seek authorisation to receive planned medical treatment in the UK or the EU, funded by their responsible State.

The UK has also agreed and signed a reciprocal healthcare memorandum of understanding (MOU) with Ireland (under the Common Travel Agreement (CTA)) in addition to Ireland being included in SSC/TCA.

The CTA is a long-standing arrangement between the UK, the Crown Dependencies (Bailiwick of Jersey, Bailiwick of Guernsey and the Isle of Man) and Ireland that pre-dates both British and Irish membership of the EU and is not dependent on it. The MOU is thus separate to the SSC/TCA arrangements (which also include Ireland) and therefore requires listing in Schedule 2 to the Principal Regulations for the law to be correct. However, the MOU is without prejudice to the SSC/TCA and will be reviewed by the UK and Ireland to clarify

the interaction between the two. However in the interim the MOU exists and should be included in Schedule 2 to the Principal Regulations.

Whilst Norway is one of the four countries outside of the TCA, in relation to reciprocal healthcare, the UK has revised and agreed a pre-EU reciprocal healthcare agreement with Norway which is currently being used until a more comprehensive agreement can be negotiated.

Not reflecting the SSC Protocol provisions of the UK TCA and the agreements with Ireland and Norway in the Welsh Charging Regulations would leave Welsh law incorrect, as the agreements are binding on the UK as a whole and Wales is required to implement them. There would also be a lack of clarity for our LHBs if the Welsh regulations do not reflect the UK position as they use the regulations in meeting their legal obligation to establish if people to whom they are providing NHS hospital services are chargeable or exempt from charging.

Under option 1 there would still be minimal impact on costs in the day to day delivery of the service as citizens from the EU and Norway were exempt from charging prior to 31 December 2020 and will remain exempt under the new UK level agreements. The SSC Protocol ensures the majority of existing reciprocal healthcare provisions – including those provided by the European Health Insurance Card (EHIC) scheme – continue. Where the UK is responsible for the healthcare of an individual, they will be entitled to reciprocal healthcare cover, as will citizens of EU countries covered by SSC Protocol or by individual healthcare agreements. The Local Health Boards currently receive a recurring annual allocation of £822,000 from Welsh Government for the treatment of overseas visitors who are not chargeable due to reciprocal healthcare agreements (this covers both EU and non EU agreements). The continuation of this allocation will assist LHBs in cases where no costs are recoverable from overseas visitors.

### **Option 2: - Amend the National Health Service (Charges to Overseas Visitors) Regulations 1989**

The objective is to ensure the law remains operable reflecting the SSC Protocol provisions of the TCA and the UK reciprocal healthcare agreements with Ireland and Norway.

In summary, the amendment regulations will:

- Provide an exemption to any overseas visitor who has an entitlement to the provision of health services without charge by virtue of a right arising from the SSC Protocol provisions of the UK TCA.
- Amend Schedule 2 to the Principal Regulations to add Ireland and Norway.

The changes being made essentially relate to ensuring the law operates correctly now that the EU Exit implementation period has ended and the UK has agreed the Protocol on Social Security Coordination in the TCA and new/revised reciprocal healthcare agreements with Ireland and Norway.

Not making these changes would not change Wales' obligation to operate the requirements of the SSC Protocol of the TCA or the reciprocal healthcare

agreements with Ireland and Norway, as the SSC/TCA and all other reciprocal agreements are binding on the UK as a whole. However, there would be a lack of clarity for LHBs if the Welsh regulations do not reflect the UK position as they use the regulations in meeting their legal obligation to establish if people to whom they are providing NHS hospital services are chargeable or exempt from charging.

It is estimated that under option 2 there would be minimal impact on costs in the day to day delivery of the service as citizens from the EU and Norway were exempt from charging prior to the 31 December 2020. LHBs will continue to receive the current annual allocation of £822,000 from Welsh Government for the treatment of overseas visitors who are not chargeable due to reciprocal healthcare agreements (this covers both EU and non EU agreements). The continuation of this allocation will assist LHBs in cases where no costs are recoverable from overseas visitors.